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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,486	07/21/2003	Pierre Garnier	235812US26CONT	4972
22850	7590	09/18/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER HUGHES, ALICIA R				
ART UNIT		PAPER NUMBER		
1614				
NOTIFICATION DATE		DELIVERY MODE		
09/18/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/622,486

**Applicant(s)**

GARNIER, PIERRE

**Examiner**

ALICIA R. HUGHES

**Art Unit**

1614

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 06 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 77-88 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 77-88 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s) Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s) Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 77-88 are pending and the subject of this Office Action.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's arguments, filed on 27 August 2009, have been fully considered and are deemed to be persuasive regarding the previous rejection. Rejections and objections not reiterated from previous Office Actions are hereby withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### ***Claim Rejection - 35 U.S.C. § 102***

Claims 77-88 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bouyer (FR 2.063.743 A1). The teachings of Bouyer et al. from this Office's Action of 06 August 2008 and 06 February 2009 are incorporated herein by reference in total.

Applicant argues that the Bouyer reference fails to disclose the claimed cosmetic or care product system, because the beauty products are not part of a system in combination with a test device as claimed. Applicant points to the language in Bouyer that reads:

The process and the devices which are the subject of the invention **may be used in all cases** in which it may be useful to determine the skin type and, in particular,

for the prescription, sale or advertising of beauty products. They may be especially useful in the case of sale of these products by mail. (Emphasis added).

Page 2 of English Translation of Bouyer, paragraph 2.

The Applicant now argues that "[t]here is simply no basis to conclude that the last paragraph of Bouyer describes an adhesive strip and a beauty product packaged together." Though appreciating Applicant's narrow reading and focus on the "products by mail" portion of the above statement to support his premise that the Bouyer reference does not read on the instant claims, the Office respectfully disagrees and considers the same rationale as but an allegation that lacks factual support.

While based on the read above, one might reasonably infer that beauty products are not necessarily required to be a part of the system in Bouyer, the same passage, based on the permissive language of "may" does allow for beauty products to be a part of the system, thus bringing the instant invention within the purview of that previously disclosed. In short, the Office reads the same passage construed by the Applicant as including a beauty product with the test device, most especially based on the language "may be used in all cases ..."

In view of the foregoing, claims 77-88 are clearly anticipated.

Claims 77-88 are rejected under 35 U.S.C. § 102(e) as being anticipated by Slavtcheff et al. '235 (US 2002/0182235 A1).

The teachings of Slavtcheff et al. from this Office's Action of 06 August 2008 and 06 February 2009 are incorporated herein by reference in total.

Applicant continues to argue that Slavtcheff et al. is not prior art over the instant application, because the present application claims benefit to an international application. Contrary to Applicant's assertion in his responses of 06 November 2008 and 27 August 2009, a

certified English translation has not been included that predates the Slavtcheff et al. reference. As a result, the rejection as proffered previously stands and claims 77-88 are clearly anticipated.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Hughes whose telephone number is 571-272-6026. The examiner can normally be reached from 9:00 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at 571-272-0718. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Public PAIR only. For information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alicia R. Hughes/  
Examiner, Art Unit 1614  
/Raymond J Henley III/  
Primary Examiner, Art Unit 1614